directors had been guilty of breaches of trust and mismanagement, "I will never determine that frauds of this kind are out of the reach of courts of law or equity, for an intolerable grievance would follow from such a determination."

As long as the directors stay within their bounds and do nothing fraudulent nor threaten to do so, nor overstep the limits prescribed by the by-laws, the shareholders may not wrest the control of the corporate property from them by means of a receiver, but as soon as they do any of these things, then their right to the control is gone. *Republican Mt. Silver Mining Co.* v. *Brown* (1893), 58 Fed. 564, 7 C. C. A. 412, 24 L. R. A. 772. So, also, where the directors are themselves the wrongdoers, they are incapacitated for the service of representing the corporation in an action against the wrong-doers. *Knoop* v. *Boherich* (1891), 49 N. J. Eq. 82; *Brewer* v. *Boston Theatre* (1875), 104 Mass. 378; nor may any fraud by any portion of the corporators be ratified by a majority or by any act or omission of the corporate body. *Brewer* v. *Boston Theatre,* supra. If, then, all the above be true, as it is, and since the fraudulent directors and officers are incapacitated for holding the trust, certainly their appointees and representatives, as the trustees in this case were, should not be allowed to administer the trust.

In the case of *Parker* v. *Nickerson* (1873), 112 Mass. 195, three directors used their influence to have the balance of the board made up of their own men; through these directors a steamboat was purchased of the first three at an enormous profit, and, when questioned, the sale was held fraudulent and was set aside on the ground that these men sold it to themselves through those whom they controlled. So, also, in the case of *Fairley* v. *Stockwell* (1892), 2 Pa. Dist. Rep. 197, the management of a corporation had been fraudulent and the company was forced into bankruptcy. The solicitor who had advised and been intimately associated with the fraudulent management was appointed assignee. In considering this fact the court held that any officer of a company reduced to insolvency would be an improper person to manage its assets, and particularly when he had had a hand in the fraudulent dissipation of these assets before insolvency, and had hastened that condition. In comparing this case with a similar one (*Tunis* v. *Hestonville R. R.,* 30 W. N. 96), the court says: "In the one case the control was attempted to be retained by going through the forms of an election; here it is done by making an assignment to one of its own officers." In both cases the act was held to be fraudulent and void. R. N. D.

LIABILITY OF MAKER OF OVERDUE NOTE TO GARNISHMENT.—A very peculiar decision has recently been rendered by the Supreme Court of Rhode Island on the liabiltiy of makers of negotiable notes to garnishment after the notes are overdue and not paid. The court holds that the exemption from liability to garnishment continues absolute, as it was before the note became due. This decision is not based on any consideration of expediency or policy, the protection of men in ordinary business transactions from secret claims and defenses, nor on anything explicit in the statutes of the state. The state

statutes and the English satutes before the law merchant became fully established are considered at length, and the argument in short is this: Before the statute *3 and 4 Anne., c. 9,* an indorsee of a note could not sue on it in his own name, and even after that statute till about the time of the decision of the case of *Brown* v. *Davies* (1789), 3 Term 80, the indorsee in due course was subject to the defense between the original parties; that statute has never been adopted in this state, but for the past 150 years our statutes have provided in various words that an indebtedness evidenced by a negotiable promissory note shall be exempt from garnishment: therefore, since defenses between the original parties could be set up against the indorsee purchasing while the note was current at the time the first garnishment exemption law was enacted, it follows that there is no distinction between a current and an overdue note as to this statute. *Oakdale Mfg. Co.* v. *Clarke* (1908), — R. I. —, 69 Atl. 681.

The only substantial reason for the exemption in the first place or any of the time has been that to charge the garnishee in such cases involved the danger of either requiring him to pay the note a second time when it turned up in the hands of a bona fide purchaser in due course, or else rendering all purchasers in due course liable to lose their account if the debt of the maker should be attached by a creditor of the payee while the note was current. The garnishment laws were originally enacted and have been since extended in furtherance of the policy of the law to make all the effects of the debtor available in satisfaction of his debts in so far as that can be done without great injury to the general public, either by discouraging the debtor's industry and making him a public charge, or by embarrassing others in their attempts to do business with him. Where the reason for the exemption ceases the exemption should cease undoubtedly, and such has been the course of the decisions on this question in the states generally.

In some states it has been held that the taker of an overdue note for value has it subject only to the defense available to the maker at the time of such transfer, and not subject to such as may arise afterwards, though before notice of such transfer; that is, that such transfer binds the maker without notice to him; and on this ground it has been held that payment on garnishment against the indorsee who owned the note at maturity and received and indorsed part payment at that time was no defense to a suit on the note by a later indorsee who acquired title before the garnishment, though the garnishee was not informed of this last transfer at the time he paid the garnishment judgment. *Edney* v. *Willis* (1888), 23 Neb. 56, 36 N. W. 300, relying on *Knisely* v. *Evans* (1877), 34 Ohio St. 158. See, also, *Shuler* v. *Bryson,* 65 N. C. 201; *Davis* v. *Pawlette,* 3 Wis. 300, 62 Am. Dec. 690. Where overdue notes are thus held to be completely transferable without notice to the maker, the garnishing creditor seeking to charge the maker on such overdue notes should certainly be required, as a condition to obtaining judgment against the garnishee, to show that at the time of the garnishment the principal defendant, whether payee or indorsee, was still the beneficial owner of the note. *Speight* v. *Brock,* Freem. Ch.

(Miss.) 389; *St. Louis Perpetual Ins. Co.* v. *Cohen*, 9 Mo. 421. On the other hand, where it is held that notes lose their negotiability by becoming overdue and in the hands of purchasers after maturity are subject to all defenses accruing to the maker before notice of the transfer, it has generally been held that the maker is liable as garnishee on all such debts. *Dore* v. *Dawson* (1844), 6 Ala. 712; *Mills* v. *Stewart* (1847), 12 Ala. 90; *Culver* v. *Parish* (1851), 21 Conn. 408; *Robinson* v. *Mitchell* (1834), 1 Har. (Del.) 365; *Burton* v. *Wynne* (1876), 55 Ga. 615; *Snider* v. *Ridgeway* (1869), 49 Ill. 522; *Patton* v. *Gates* (1873), 67 Ill. 164; *Covert* v. *Nelson* (1846), 8 Blackf. (Ind.) 265; *Elston* v. *Gillis* (1880), 69 Ind. 128; *McCoid* v. *Beatty* (1861), 12 Iowa 299; *Stevens* v. *Pugh* (1861), Id. 430; *Yocum* v. *White* (1873), 36 Iowa 288; *Clark* v. *King* (1806), 2 Mass. 524; *Cushman* v. *Haynes* (1838), 37 Mass. (20 Pick.) 132; *Nesbitt* v. *Campbell* (1877), 5 Neb. 429; *Wolfe* v. *Cawoode* (1870), 48 Tenn. (1 Heisk.) 597; *Thompson* v. *Gainesville Nat. Bank* (1886), 66 Tex. 156, 18 S. W. 350; *Hindsdill* v. *Safford* (1839), 11 Vt. 309; *Austin* v. *Ryan* (1878), 51 Vt. 110.

J. R. R.

THE RELATION OF THE BANK TO ITS DEPOSITORS.—For the first time in the history of the Delaware courts the principles governing the relations existing between bank and depositor have come up before the Supreme Court. For this reason the court entered into an "elaborate consideration of the governing principles."

The plaintiff depositor had an extensive account with the defendant bank, checks upon which account were from time to time issued by the secretary or treasurer of the company. In the regular course of business many of these checks came from the office of the treasurer into the hands of the secretary, who fraudulently altered them so as to be made payable "to bearer" rather than payable "to order." In all 114 checks were so altered during a period of time covering several years, and during which time statements of account were rendered by the bank, but through the carelessness and fraud of the company's officers the alterations were not noticed. The changes were patent. The suit is to credit the plaintiff with checks paid out by the bank and debited from the account of the company. *National Dredging Company* v. *Farmers' Bank of the State of Delaware* (1908) — Del. —, 69 Atl. 607.

Respecting the duty of the depositor, Mr. Justice HARLAN said, in the case of *The Leather Manufacturers' Bank* v. *Morgan*, 117 U. S. 96, 106: "The depositor cannot without injustice to the bank omit all examination of his account, when thus rendered at his request. His failure to make examination or have it made within a reasonable time after the opportunity given for that purpose is inconsistent with the object for which he obtains and uses the pass book." This duty of the depositor operates only in the case in which the bank has been guilty of no negligence and in which the depositor is guilty of laches. The comments of Mr. Justice HARLAN in the